

G. R. S. IX-5]

Previous references.

Reserve

File No. 16828

1918.

Serial Nos. /

(Cx)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for February 19.

SUBJECT.

Certain uncalled for reflections made
by Mr. Nagappa, Sessions Judge of Shimoga upon
a legal practitioner.

Del. From. The Secy, Chief Court.

Noted at 735-879-11/Jan'y 19.

For copy of the Chief Court's judgment
in C. A. No. 39 of Oct 1918-19 on the file of the
Court for the purpose of the remarks made in
the last paragraph thereof against Mr. Nagappa
Bar-at-law, Sessions Judge of Shimoga

W D 1250-GPB-30,000-25-1-19

*Ans
10.2.19.*

GENERAL AND REVENUE SECRETARIAT

(Cowd)

NOTES.

File No. 168-18

FILE HEADING.

Certain uncalled for reflections made
by Mr. Nagappa, Sessions Judge of Shimoga
upon a legal practitioner

From

The Registrar, Chief Court

No. 2, Dis 735 Dated 9/1/19

Received

Diary No. 9.908

Enclos. /

Spare Copies.

/

Serial No. /

BRIEF ABSTRACT OF LETTERS.

Forwards copy of the Chief Court's
Judgment in C. A. No. 39 of 1918-19 on the
file of that Court for the perusal of the
remarks made in the last paragraph thereof
against Mr. Nagappa, Sessions Judge of Shimoga

NOTES AND ORDERS.

Enhd. for perusal

867
21/1/19.

Chief Secy/

GMDA
21.1.19

Dawan this members)

222
31.1.19

NOTES—First Sheet

887
28/1/19
Dm.
30/1

General and Revenue
Secretariat.

File No. 168 of 1918.

Serial
No.

2) Seen. The "legal practitioners" upon whom
Mr. Vagstad made the unwarrantable
assessments referred to in the Just. & the
chief law is, I may say, the present
off. Gov. Adscale.

3) -
I think the Just. may
be submitted to H.H. for
perusal. Perhaps missed

4) The Committee may
indulge had some
idea of. Perhaps the
Police. The Committee
knows who the officer
was - The Committee
by the Police. The Committee
assumed.

5) Security
Shortage

Please note the
imp. reg. by Secy.

(1)

The Records are not
available, to have been called for. It is

ascertained that the Com^d Magistrate was
Mr. C. Kaleshman Rao B.A. 134, Pers. Secy. to the
W. C. Shimoga.

1789-GPB-60,000-20-8-18-S.
11/2

Records received
& returned separately
NOTE—Contn. sheet.
20/12

Chief Secy)

4325
4.2.18.

1059

(3)

F. R. S. III-2]

General and Revenue
Secretariat.

CS File No.

168 of 1918.

Serial
No.

7) Subd with no D.S. no.
The portion of the map is marked
in blue pencil.

Chitgarh

Dm.
12/2

Dewan

CS.
14/2/18
Dm.
15/2

NOTE—Contn. sheet.

Submitted to His Highness.

Subject. - Reflections on the conduct of the defence Counsel, made by the Sessions Judge of Shimoga in Kadur Sessions Case No.2 of 1918-19.

Flag A.

In the above case, the Sessions Judge Mr.E. Nagappa made certain reflections^x on the conduct of the defence Counsel in the case, Mr.Shankernarayana Rao, now Offg.Government Advocate, and attributed to him unprofessional conduct on the inference that Counsel had set up an allegation of torture in the written statement filed by him, although his client had not raised such a plea. In criminal Appeal No. 39 of 1918-19, the Chief Court have discussed the propriety of these reflections and held^x that they are wholly unwarranted and uncalled for and have expressed their surprise and regret that the Sessions Judge Mr.E.Nagappa should have thought fit to make them.

*Page 5 to 7 of 1/2
judgment.*

A copy of the judgment of the Chief Court is submitted to His Highness for information.

nu/

Amur

17. 2. 19.

(5)

Record of Cases submitted for the Orders
of His Highness the Maharaja.

Subject.



Unwarranted reflections made by the
Sessions Judge of Shimoga, on the conduc
of the Defence Counsel in Kadur Sessions
Case No.2 of 1918-19.

Order.

K. Rao
18.2.19.

Chief secy

2

192.

hm

W. 20/2

10/2

9089 (6)

G. R. S. III-2]

General and Revenue
Secretariat.

CL File No. 168 of 1918.

Serial
No.

may these papers be filed
Sd/- for order.

3/2
20/2
10/2

yes
D.M.
24/2

B
24/2

NOTE—Contn. sheet.

749089
D₂ Dis. No. 735 1918-19. *lm*

Secy
Ch
21521

cl
Chief Court of Mysore, *168-18*

Bangalore, dated the 9th January 1919. *U¹*

From

G. Sreenivasa Iyer, Esq., B.A., L.L.,

Registrar of the Chief Court of Mysore,

B A N G A L O R E.

To

cl
21521/19
C.S. Balasundaram Iyer, Esq., B.A.,

Chief Secretary to the Government of Mysore,

B A N G A L O R E.

S i r,

I am directed to forward herewith a copy of this Court's judgment in Criminal Appeal No. 39 of 1918-19 on the file of this Court for the perusal by ~~the~~ Government of the remarks made by the Judges in the last paragraph thereof against Mr. B. Nagappa, Bar-at-Law, Sessions Judge of Shimoga.

I have the honor to be,

S i r,

Your most obedient servant,

G. Sreenivasa Iyer
R E G I S T R A R.

8

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 23rd day of December 1918.

Present.

Mr. Justice K.S.CHANDRASEKHARA AIYAR,

and

Mr. Justice R.B.FLUMER.

Petition of Criminal Appeal

M. B. Nagappa
No. 39 of 1918-19 against the conviction and sentence by the Sessions Judge of Shimoga under section 302 of the Indian Penal Code in Kadur Sessions Case No. 2 of 1918-19.

APPELLANT.

S a n n i

(1st accused)

J U D G M E N T.

The appellant Sanni, the junior widow of one Sanna Kariya of Gellarahalli, has been convicted by the Sessions Judge of Shimoga of having murdered Gowri, the senior widow, on the night of Saturday the 8th June 1918; and on such conviction has been sentenced to transportation for life.

The grounds of appeal have been placed fully before us by the appellant's Advocate Mr. M. Krishna Kurti; but though we have given our best consideration to them, the evidence for the prosecution is so strong that we find it impossible to doubt the appellant's guilt.

G

It cannot be denied that Sanni had ample motive for wishing to get rid of her co-widow, who was frequently taking exception to her open intimacy with Chetta alias Kariya (the second accused in the Court of Session), and had indeed brought the matter before a caste panchayat about a month and a half or two months before the date of the occurrence with the result that all the parties concerned were subjected to fines. It is also in evidence that the two women were quarrelling with and abusing each other on the Saturday evening in question. (i.e. the 8th June).

Now Gowri who, according to the testimony of her young son Kariya (the 5th witness for the prosecution) was sleeping that night after supper in the kitchen of the common residence, in another portion of which Sanni was sleeping with her paramour, was not seen again in the village. Her disappearance was accounted for by the appellant, to the boy Kariya the next morning, and later on to the villagers when questions began to be raised, by saying that Gowri had gone to Neelagowdanakeppal in order to collect some outstanding debts. She even sent the prosecution 7th witness Sakrya to that hamlet some eight days later in order to make enquiries, of course without result; there is not only no evidence that the missing woman could have possibly gone away as alleged, but the circumstances leave little room for doubt that the appellant must have purposely invented that explanation in order to account for a sudden disappearance, of the real nature of which she must have been aware.

An incident which throws significant light on this point is spoken to by the same witness Sakrya, who, it appears was both cultivating the lands of the widows as a tenant and working in their house as a ~~tenant~~ servant; and that is,

that

(10)

that some eight days after he returned from his fruitless errand to Neelagowdanakoppal, he noticed a bad smell proceeding from the grain-pit in the backyard of the house, a smell which the appellant attributed to her having killed a goat and thrown its carcass into the pit, and that at her instance the witness threw some basketfuls of earth over its mouth besides drawing the branch of a tree ~~thru~~ thereon.

Shortly afterwards, that is on the 27th June 1918, as the result of a report made by the patel, the police entered on an investigation; and on the following morning the remnants of a dead body, consisting of more or less detached bones (indicating that the body must have been undergoing decomposition for a considerable time underground), were taken out of the grain pit on information stated to have been furnished by the appellant Sanni. The second accused is also said to have given the identical information, but this we may put aside as being probably one of those misplaced attempts on the part of the police by which they seek to ~~connect~~ connect more persons than one with a single item of discovery.

Apart from the source of the information, considerable importance obviously attaches to the manner and circumstances of the discovery. Though the medical evidence does not itself go farther than to suggest that the skeleton must have been that of an adult female, the facts that it was found in the grain-pit attached to the house occupied by the widows, that around it was the sadi proved to have been last worn by Gowri, with a quantity of long hair sticking to it, that when the sadi was shaken the iron key of Gowri's box dropped down, and that two silver rings that used to be worn by her when alive were found in position round the last two finger

bones

bones of the left hand, are, taken along with the disappearance of Gowri under suspicious circumstances, quite enough to prove that it was her skeleton that was taken out of the pit.

Passing over minor details, we have finally the confession of Sanni herself (Exhibit P₆), recorded by the Sub Divisional Magistrate of Tarikere on the 29th June. It is a fairly circumstantial statement, corroborated in several important particulars by the other evidence in the case; and is quite unreserved even to the extent of exculpating her paramour the second accused from participation in the actual deed of murder. There is no reason to think that the confession was made under extraneous pressure of any kind; on the contrary, considering the circumstances in which it was given, very soon after ^{her} arrest and before she could have been long in police custody, and in continuation virtually of the discoveries effected as the result of information given by her, it may be presumed to have been made freely and voluntarily and to be a more or less true account of what had taken place. It may consequently be safely used against her in spite of its subsequent retraction ^{at}. Even without the confession, the other evidence in the case suffices in our opinion to prove the appellant's participation in the crime, though it might fall short of indicating the exact part that she took therein; but taken along with it, her guilt is established beyond a doubt.

The act of the appellant in murdering her victim in cold blood, while she was asleep, was a heartless and brutal one, which was in no way extenuated by the nature of the motive that may have urged her to it. In the circumstances a capital sentence would have been the appropriate one; but the Sessions Judge has chosen to

pass

(vi)

pass the alternative sentence of transportation ~~of~~ for life, and though the reason assigned by him, namely "the non-identification of the body", is hardly adequate, ignoring as it does the cumulative effect of the circumstantial evidence which leaves no room for ~~any~~ doubt that the corpse must have been that of Gowri, we do not feel called upon to interfere with the exercise of his discretion.

The conviction and sentence are affirmed and the appeal dismissed.

In conclusion we have to notice certain reflections upon the conduct of defence counsel which are contained in paragraph 7 of the lower court's judgment, and to which strong exception has been taken before us in the course of the hearing of this appeal. The question of the validity of the practice of filing written statement on behalf of accused persons in sessions trials has been discussed by the Sessions Judge, but does not arise before us for a decision. The point that had to be considered in the lower court was whether the allegation made by the first accused Sanni as part of her defence, as to her having been ill-treated by the police and tutored and compelled to make her confession of the 29th June 1918, was or was not true. Such an allegation was first definitely ~~put~~ put forward in the written statement, marked Exhibit P_{5a}, to which Sanni is shown to have affixed her thumb-mark before the Lock-up officer on the 22nd July, and which on the following day she admitted during her examination by the Committing Magistrate as being "her statement produced through her lawyer". In the court of Session she adopted as her own both the oral examination as well as the written statement, and ~~further~~ further

further repeated in some detail her charges of police torture and tutoring. Now it may be necessary, and it is quite legitimate, for the court, in order to find out how far charges of this kind are well-founded, to question a prisoner as to any previous complaints made in the matter to some authority competent to enquire into them. But that is a different thing from trying to elicit from a prisoner the nature of the instructions he may have given to his legal adviser; as long as no question arises as between the two, and as long as the defence put forward by the legal adviser is not repudiated, there is as little occasion as there is justification for cross-examining an accused person in the manner in which the ^{present applicant} ~~prisoner~~ appears to have been cross-examined by the Sessions Judge as to who it was that engaged a lawyer for her and whether she mentioned the alleged ill-treatment to her lawyer when he had come to see her, and so forth. Sanni's negative answer to the last question, whether induced by fear, agitation or thoughtlessness, could hardly be true; and yet in the absence of any other confirmatory circumstance whatsoever, and in the absence also of any explanation from the legal adviser concerned, the Sessions Judge proceeds to draw what he describes as "an irresistible inference that the plea of torture raised in the written statement is not one raised by Sanni the first prisoner but by her legal adviser or friend", and to attribute to a legal practitioner of some standing and reputation the highly unprofessional conduct of "drawing up such a document containing important statements and putting it before a court as the statements of the first prisoner when, as a matter of fact, they are really not her statements."